

REMARKS

Claims 1-27 are pending. In the instant Office Action the Examiner alleges that the pending claims lack a special technical feature over WO 02/088181, and thus are subjected to restriction and/or election requirement. The claim groups are as follows:

- I. Claims 1-6 drawn to in vitro methods comprising S100A8 or S100A9;
- II. Claims 7-16 drawn to in vivo methods comprising S100A8 or S100A9;
- III. Claims 16-21 drawn to a composition comprising a nucleotide sequence encoding a mutant human S100A8 protein that is at least 70% identical to SEQ ID NO:2;
- IV. Claims 16-21 drawn to a composition comprising a nucleotide sequence encoding a mutant human S100A9 protein that is at least 70% identical to SEQ ID NO:4;
- V. Claims 22-27 drawn to a composition comprising a mutant human S100A8 protein that is at least 70% identical to SEQ ID NO:2; and
- VI. Claims 22-27 drawn to a composition comprising a mutant human S100A9 protein that is at least 70% identical to SEQ ID NO:4.

Applicants hereby elect Group V, *without traverse*. In addition, Applicants hereby amend Claim 22, cancel Claims 1-21 and 27, and introduce new Claims 28-34, in order to further their business interests, without acquiescing to the Examiner's arguments, and while reserving the right to prosecute the original, similar or broader claims in one or more future application(s). In particular, Applicants have amended independent Claim 22 to recite "a mutant human S100A8 protein that is at least 95% identical to SEQ ID NO:2." Support for this amendment can be found but is not limited to the teaching pertaining to nucleic acids encoding S100A8 protein sequences that are from "70%, 80%, 90%, to 95% or more identical to SEQ ID NO:2" (Specification, at page 7, lines 32 and 33). Moreover, support for new dependent Claims 28-34 can be found in original

Claims 1-3, 7 and 10-12. Thus new no matter has been introduced, and Claims 22-26 are encompassed by the elected Group V. Applicants respectfully reserve their right to rejoinder of the new method claims, in the event that the composition claim from which they depend is found to be allowable.

CONCLUSION

Applicants believe that the amended claims are in condition for allowance. However should the Examiner believe that a telephone interview would aid in the prosecution of this application, Applicants encourage the Examiner to call the undersigned collect.

In the unlikely event that the transmittal form is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. **03-1952** referencing Attorney Docket No. **643662000200**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

E-Signature: /Christine Lekutis/
Christine Lekutis

Registration No.: 51,934
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
(415) 268-7060